IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

OP.No. 14722 of 2000(C)

PETITIONER:

SR. DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY,
TRIVANDRUM.

BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS

RESPONDENTS:
---

1. SMT. M.A.LAKSHMI, D/O. ACHUTHAN,
MARTHIPARAYIL HOUSE, KAIPATTOOR P.O.
ARAKUNNAM (VIA), PIN. 682 313.

2. ASSISTANT LABOUR COMMISSIONER (C),
39/1329, KALATHIPARAMBIL ROAD,
ERNAKULAM SOUTH, COCHIN - 16.

3. REGIONAL LABOUR COMMISSIONER (C),
39/1329, KALATHIPARAMBIL ROAD,
ERNAKULAM SOUTH, COCHIN-16.

R1 BY ADV. SRI.B.GOPAKUMAR
R2 & R3 BY SR. GOVERNMENT PLEADER SHRI BENJAMIN PAUL.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN O.P. NO.14722 OF 2000 C

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ABSTRACT OF PARA 2005 & 2006 OF THE RAILWAY ESTABLISHMENT MANUAL VOL.II (1990 EDITION).

EXT.P2 TRUE COPY OF THE APPLICATION DATED 24.7.97 IN G.A. NO.27/97 ALONG WITH ANNEXURES FILED BY THE 1ST RESPONDSENT BEFORE THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF CASUAL LABOUR CARD OF THE 1ST RESPONDENT.

EXT.P4 TRUE COPY OF WRITTEN OBJECTION DATED 9.12.97 IN G.A. NO.48(27)/97 OF THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF THE ORDER DATED 30.12.1997 IN G.A. NO.27/97 OF THE SECOND RESPONDENT.

EXT.P6 TRUE COPY OF APPEAL DATED 5.5.98 IN GRATUITY APPEAL 42/98 FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P7 TRUE COPY OF THE ORDER DATED 17.2.2000 OF THE 3RD RESPONDENT IN GRTATUITY APPEAL 42/98.

EXT.P8 TRUE COPY OF THE COMMON ORDER DATED 1.2.96 OF CAT IN OA 631/94.

RESPONDENTS' EXHIBITS: NIL.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

O.P. NO. 14722 OF 2000 C

Dated this the 4th December, 2007

JUDGMENT

The Writ Petition is filed by the Senior Divisional Personnel Officer, Southern Railway, Trivandrum. He calls in question Exts.P5 and P7. The first respondent applied for gratuity under the Payment of Gratuity Act, before the Controlling Officer, and Ext.P5 is the order issued by the Controlling Officer under the Payment of Gratuity Act, who has allowed the application and directed payment of a sum of Rs.22,055/= as gratuity to the first respondent. The case of the first respondent was that the first respondent was in casual service from 21.1.1963 and she was conferred with temporary status and absorbed as regular servant on 19.6.1992. She was superannuated on 31.3.1995. It is her case that she should be paid 29 years' gratuity. For the period from 21.1.1968 to 12.9.1975 and also for the period from 6.7.1976 to 5.4.1978, the first respondent could not give satisfactory explanation for non-employment. Proceeding on the basis that there is a notional termination of the employment of the first respondent, when she was absorbed

into regular service in the Railway, it was found that the first respondent was entitled for gratuity for the period of casual employment. On this basis and finding that the number of years of casual service is nineteen years, it was found by the Controlling Authority that the first respondent is entitled to Rs.22,055/= as gratuity. Petitioner carried the matter in appeal and Ext.P7 is the order of the Appellate Authority. The Appellate Authority also took the view that the first respondent is entitled to gratuity, but proceeded to modify the amount payable as Rs.17,100/=, taking note of the fact that the first respondent was receiving a sum of Rs.1,559.50, and not Rs.2,012/= as found by the Controlling Authority. Petitioner calls in question the same.

2. Learned counsel for the petitioner points out that the matter in issue is squarely covered by a Division Bench Judgment of this Court in O.P. No.15460 of 2000 dated 10.9.2002. Therein, the Division Bench proceeded to hold that,

> "At the time when casual employee is absorbed into regular service, his service is not terminated due to superannuation, resignation or retirement as rightly contended by the

> Railway in O.P. No.15460/2000. Even though casual service came to an end, the employment is not terminated. There is no cessation of employment. They are absorbed in the regular service and the entire service has to be treated as one and they are entitled to get gratuity for the entire service at the rate of 15 days' wages for every completed year of service under the Payment of Gratuity Act. If they are entitled to better benefits as per Service Rules, they are entitled for the same. They can claim the better benefits whenever they choose. If the benefits under the Payment of Gratuity Act is better, they can choose that."

3. On the basis of the said view, it was held that the employees are entitled to get the entire payment of pensionary benefits and retirement benefits on the basis of the Service Rules or Payment of Gratuity Act, whichever is beneficial and they are not entitled to gratuity at the time when their status of casual labourers is changed into regular service. The Division Bench proceeded to allow the Writ Petition filed by the Railway in OP No.15460/00 and further hold that if the Railway has paid gratuity at the time of absorption of service into regular service, that amount can be deducted by them from the final payment in accordance with the Service Rules.

4. Petitioner in this case also is entitled to the benefit of the above Judgment. Accordingly the Original Petition is allowed and it is ordered that the first respondent is entitled to get the entire pensionary benefits and retirement benefits on the basis of the Service Rules or the Payment of Gratuity Act, whichever is beneficial. It is also ordered that if the petitioner has paid gratuity at the time of absorption into regular service, that amount can be deducted in accordance with the Service Rules.

K. M. JOSEPH, JUDGE

kbk.

K. M. JOSEPH, J.

O.P.NO. 14722 OF 2000 C

JUDGMENT

4th December, 2007.